

26 October 1987

JUDGE:

RE: Your Remarks
at Judge Lay's Church
St. Paul, MN
1 November 1987

You have agreed to address two services (20-25 minutes of remarks for each) at Judge Lay's House of Hope Presbyterian Church on 1 November. In keeping with Judge Lay's suggestion in a letter to you (see opposite), you agreed with my recommendation that you present a condensed version of your speech at the Institute for Judicial Administration in August. Attached is the condensed version. Also attached is the full text of your remarks to the IJA.

Bill Baker

Attachment:
a/s

PROPOSED REMARKS
BY
WILLIAM H. WEBSTER
DIRECTOR OF CENTRAL INTELLIGENCE
HOUSE OF HOPE PRESBYTERIAN CHURCH
ST. PAUL, MINNESOTA
NOVEMBER 1, 1987

MY GOOD FRIEND JUDGE LAY ASKED ME TO BE A PART OF THIS PROGRAM CELEBRATING THE BICENTENNIAL OF THE CONSTITUTION. AND I WAS HAPPY TO ACCEPT HIS INVITATION. THIS TRIBUTE TO THE CONSTITUTION IS ESPECIALLY APPROPRIATE FOR ME BECAUSE MY CAREER HAS BEEN ONE OF DEFENDING, INTERPRETING, AND ENFORCING THE LAW. I HOPE IT WILL BE NO SURPRISE FOR YOU TO LEARN THAT I AM STILL OPERATING WITHIN THAT TRADITION OF LAW AS THE DIRECTOR OF CENTRAL INTELLIGENCE.

NOT LONG AGO SOMEBODY GAVE ME A LAPEL BUTTON WHICH READS, "MY JOB IS SO SECRET THAT EVEN I DON'T KNOW WHAT I AM DOING." THERE MAY BE SOME CORRELATION BETWEEN THAT STATEMENT AND HOW WE FEEL ABOUT SECRECY. IT CONJURES UP IMAGES OF ORWELLIAN INTRUSION BY GOVERNMENT, OF CLANDESTINE ACTIVITIES THAT PUT AT RISK OUR MOST CHERISHED INDIVIDUAL LIBERTIES, OF MISTAKES AND BLUNDERS CONCEALED WITHIN DOCUMENTS CLASSIFIED SECRET OR "EYES ONLY."

THERE IS, OF COURSE, AN HISTORICAL BASIS FOR ALL OF THESE CONCERNS, INCLUDING SOME VERY RECENT HISTORY. BUT THAT IS NOT MY PURPOSE IN SPEAKING TO YOU TODAY. RATHER, I PROPOSE TO TALK ABOUT

THE COLLECTION OF INTELLIGENCE AT HOME AND ABROAD, AND HOW OUR CONSTITUTION HAS ACCOMMODATED THIS FUNCTION SO VITAL TO OUR NATIONAL SECURITY, AND HAS INSPIRED A SYSTEM OF OVERSIGHT THROUGH THE SEPARATION OF POWERS.

TAKING A LEAF OR TWO FROM MY EXPERIENCES ON THE FEDERAL BENCH AND AS DIRECTOR OF THE FBI, I CONDUCT MY RESPONSIBILITIES WITH TWO CARDINAL THESES: FIRST, THAT THE INTELLIGENCE ACTIVITIES VITAL TO THE PROTECTION AND PRESERVATION OF OUR NATIONAL SECURITY MUST BE CONDUCTED OBJECTIVELY, PROFESSIONALLY, AND LAWFULLY, WITH ABSOLUTE FIDELITY TO OUR CONSTITUTION AND TO OUR LAWS. AND, SECOND, THERE MUST BE A TRUSTWORTHY SYSTEM OF OVERSIGHT AND ACCOUNTABILITY WHICH BUILDS, RATHER THAN ERODES, TRUST BETWEEN THOSE WHO HAVE THE INTELLIGENCE RESPONSIBILITY AND THOSE WHO ACT AS SURROGATES FOR THE AMERICAN PEOPLE.

INTELLIGENCE HAS ALWAYS PLAYED A MAJOR ROLE IN OUR HISTORY AND IS AT LEAST AS OLD AS OUR CONSTITUTION. A COUPLE OF YEARS AGO, MALCOLM FORBES PRESENTED BILL CASEY AND ME WITH FACSIMILIES OF A

CONSUMERS ARE THE PRESIDENT, THE VICE PRESIDENT, THE SECRETARY OF STATE, THE SECRETARY OF DEFENSE, THE SECRETARY OF THE TREASURY, THE NATIONAL SECURITY COUNCIL, AND OF COURSE, THE SELECT COMMITTEES OF THE SENATE AND THE HOUSE.

INTELLIGENCE MUST ALSO BE TIMELY. IN JULY I SPENT A DAY AT NORAD, IN COLORADO SPRINGS, WHICH IS ONE OF THE PRINCIPAL EARLY WARNING SYSTEMS FOR OUR COUNTRY'S NATIONAL DEFENSE. A DAY THERE CAN'T HELP BUT MAKE ONE AWARE OF THE CRITICAL IMPORTANCE OF EARLY AND ACCURATE INTELLIGENCE FOR OUR NATIONAL DEFENSE. MUCH TIME HAS PASSED SINCE OUR CONSTITUTION WAS FORMED, AND NOW IN TERMS OF SURVIVAL WARNINGS, WE THINK IN TERMS OF MINUTES RATHER THAN IN MONTHS AND YEARS.

THE FORMS OF INTELLIGENCE VARY FROM THE HUMAN INTELLIGENCE THAT WE ARE ALL AWARE OF--CLANDESTINE INTELLIGENCE AND THE GATHERING OF PUBLIC SOURCE INFORMATION AROUND THE WORLD--TO SIGNALS AND COMMUNICATIONS INTELLIGENCE AND IMAGERY INTELLIGENCE, SOME OF WHICH INVOLVES SATELLITES WHERE A SUBSTANTIAL AMOUNT OF OUR BUDGET IS SPENT.

IT IS IMPORTANT THAT INFORMATION THAT IS COLLECTED BE DEVELOPED IN AN OBJECTIVE WAY--THAT THE DIRECTOR OF CENTRAL INTELLIGENCE AND THE PEOPLE WHO ANALYZE THE INFORMATION BE SEEN AS GIVING OUR BEST ESTIMATES. NOT TO "COOK THE BOOKS" OR TO SHAPE OR INFLUENCE POLICY, BUT TO PROVIDE POLICYMAKERS WITH THE KIND OF INFORMATION UPON WHICH THEY CAN MAKE THE BEST DECISIONS IN THE INTEREST OF OUR NATIONAL SECURITY.

IN ADDITION TO COLLECTION AND ANALYTICAL ACTIVITIES, THE CIA PLAYS A ROLE IN THE IMPLEMENTATION OF FOREIGN POLICY AND THIS IS DONE THROUGH ITS COVERT ACTION PROGRAMS. THESE MAY INCLUDE POLITICAL WORK THROUGH COMMUNICATIONS--GETTING THE MESSAGE OUT--TRAINING, SUPPLYING IMPORTANT MATERIALS FOR THOSE WHOM WE SUPPORT, AND FOR GIVING ADVICE. ALTHOUGH COVERT ACTION IS NOT DEFINED BY THE LAW, THE TERM HAS COME TO BE UNDERSTOOD AS REFERRING TO ACTIVITIES CONDUCTED IN SUPPORT OF NATIONAL FOREIGN POLICY OBJECTIVES IN SUCH A WAY THAT THE ROLE OF THE UNITED STATES GOVERNMENT IS NOT APPARENT.

COVERT CAPABILITY, ESSENTIAL IN OUR FOREIGN POLICY, PROVIDES
NEEDED SUPPORT FOR LIBERATION MOVEMENTS, OFTEN PROVIDES SUPPORT TO
GOVERNMENTS, AND ALLOWS US TO WORK IN COLLABORATION WITH THOSE
GOVERNMENTS WHO DO NOT WISH, FOR LEGITIMATE POLITICAL REASONS OF
THEIR OWN, TO HAVE THE U.S. ROLE AND INVOLVEMENT PUBLICLY KNOWN.

FROM PRESIDENT ROOSEVELT FORWARD, EVERY PRESIDENT HAS ENDORSED
AND USED COVERT ACTION TO SUPPORT THE FOREIGN POLICY OF THIS COUNTRY.
ALTHOUGH COVERT ACTIONS TRADITIONALLY CLAIM ONLY A VERY SMALL PORTION
OF THE CIA'S BUDGET, THEY ARE THE FOCUS OF THE GREATEST CONGRESSIONAL
AND PUBLIC ATTENTION. AND HAVING SEEN SOME OF THE RESPONSIBILITIES
FOR COVERT ACTION MOVE OUTSIDE THE CIA INTO THE NATIONAL SECURITY
COUNCIL, I CAN UNDERSTAND HOW THIS HAS ADDED TO THE CONFUSION,
SUSPICION, AND THE ILL EASE OF THE AMERICAN PEOPLE. I HAVE HEARD
THIS SITUATION DESCRIBED AS A GOVERNMENT WITHOUT RULES INSIDE A
GOVERNMENT THAT DID NOT KNOW. SINCE RESPONSIBILITY FOR COVERT ACTION
HAS COME BACK TO THE CIA--NEVER TO LEAVE AGAIN, I HOPE THAT I CAN
CONVINCE YOU THAT WE HAVE RULES THAT, IF FOLLOWED BY MEN OF INTEGRITY
AND DEDICATION, WILL MEET THE CONSTITUTIONAL REQUIREMENTS AND SUSTAIN
OUR NATIONAL SECURITY NEEDS.

WE MUST, OF COURSE, HAVE SECRECY. BOTH CONGRESS AND THE JUDICIARY HAVE RECOGNIZED THE NEED FOR SECRECY IN MATTERS OF NATIONAL SECURITY. IN THE FREEDOM OF INFORMATION ACT THERE ARE EXPRESS PROVISIONS PROTECTING FROM DISCLOSURE THOSE MATTERS OF FOREIGN COUNTERINTELLIGENCE AND INFORMATION SUPPLIED TO US BY FOREIGN INTELLIGENCE AGENCIES.⁴ THE FOREIGN INTELLIGENCE SURVEILLANCE ACT, FOR EXAMPLE, PROVIDES FOR A SPECIAL COURT TO REVIEW, IN SECRET, THE APPLICATIONS FILED TO CONDUCT ELECTRONIC SURVEILLANCE FOR FOREIGN INTELLIGENCE PURPOSES. THIS STATUTE HAS BEEN FOUND TO BE WITHIN THE CONFINES OF THE CONSTITUTION.⁵

THE MAIN PURPOSE OF SECRECY IN THESE EFFORTS IS TO PRESERVE AND PROTECT SOURCES AND METHODS. IF WE CANNOT PROTECT OUR SOURCES, WHETHER THEY ARE FBI INFORMANTS OR ASSETS DEVELOPED AROUND THE WORLD, WE WILL NOT GET THE INFORMATION THAT WE NEED. IF WE CANNOT PROTECT THE SENSITIVE METHODS BY WHICH WE COLLECT THAT INFORMATION BOTH IN TERMS OF INDIVIDUALS ON THE GROUND AND SATELLITES IN SPACE, WE WILL CEASE TO HAVE THE MEANS OF COLLECTING INFORMATION.

WE HAVE, WATCHING OUT AFTER YOUR INTERESTS, CONGRESSIONAL OVERSIGHT. IN 1976 AND 1977, BOTH HOUSES OF CONGRESS ESTABLISHED INTELLIGENCE OVERSIGHT COMMITTEES TO MONITOR ALL SIGNIFICANT INTELLIGENCE ACTIVITIES AND EXPENDITURES. WE FIND MANY OF THE RULES WHICH GOVERN OUR ACTIVITIES IN THE NATIONAL SECURITY ACT, THE HUGHES-RYAN AMENDMENT, AND THE INTELLIGENCE OVERSIGHT ACT. FOR EXAMPLE, THE OVERSIGHT COMMITTEES, OPERATING UNDER THOSE ACTS, HAVE FORMALIZED THE REPORTING OF INTELLIGENCE AND COVERT ACTIONS TO CONGRESS. THE INTELLIGENCE COMMUNITY IS NOW REQUIRED BY LAW TO KEEP THE INTELLIGENCE COMMITTEES FULLY AND CURRENTLY INFORMED OF ALL INTELLIGENCE ACTIVITIES. UNDER THE HUGHES-RYAN AMENDMENT, THE PRESIDENT MUST FIND THAT EACH COVERT ACTION IS IMPORTANT TO THE NATIONAL SECURITY BEFORE THE OPERATION CAN BE INITIATED.⁶

UNDER LAW IT IS OUR DUTY TO NOTIFY THE COMMITTEES OF ANY SIGNIFICANT INTELLIGENCE ACTIVITIES WHICH INCLUDE ANY ACTIVITIES REQUIRING A FINDING UNDER THE HUGHES-RYAN AMENDMENT. NOW UNDER THE STATUTE, TO MEET EXTRAORDINARY CIRCUMSTANCES AFFECTING VITAL INTERESTS OF THE UNITED STATES, THE PRESIDENT CAN LIMIT THAT NOTIFICATION TO THE CHAIRMAN AND RANKING MINORITY MEMBER OF THE

INTELLIGENCE COMMITTEES, TO THE SPEAKER AND THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES, AND TO THE MAJORITY LEADER AND MINORITY LEADER OF THE SENATE--REFERRED TO, IN TRADE PARLANCE, AS THE "GANG OF EIGHT." AND THERE IS ANOTHER STATUTORY REQUIREMENT THAT THE INTELLIGENCE COMMITTEES BE FULLY INFORMED IN A "TIMELY FASHION" OF INTELLIGENCE ACTIVITIES IN FOREIGN COUNTRIES OTHER THAN THOSE SOLELY FOR THE PURPOSE OF COLLECTING INTELLIGENCE FOR WHICH PRIOR NOTICE WAS NOT GIVEN--AND THE PRESIDENT MUST STATE THE REASONS FOR NOT GIVING PRIOR NOTICE IN THOSE INSTANCES.⁷

WE ARE IMPROVING THE MANAGEMENT CAPABILITY TO DEAL WITH COVERT ACTIVITY. IT IS NOT ENOUGH JUST FOR THE PRESIDENT TO MAKE A FINDING AUTHORIZING AND DIRECTING US TO TAKE SOME COVERT ACTIVITY. WE HAVE TO KNOW BEFORE THE PRESIDENT MAKES THAT FINDING THAT IT IS DOABLE, AND DOABLE IN A LAWFUL WAY. AND WE HAVE TO BE SURE THAT THE INDIVIDUALS WHO ARE OUT ON THE FIRING LINE, OUTSIDE THE PROTECTION OF OUR CONSTITUTION AND OUR LAWS, IN MANY INSTANCES, CAN DO THEIR WORK IN ACCORDANCE WITH THE FLEXIBILITY THAT THEY NEED, WITH THE CLEAREST POSSIBLE TRAINING AND UNDERSTANDING OF THEIR RESPONSIBILITIES TO THE CIA AND TO THE COUNTRY.

THE NATIONAL SECURITY PLANNING GROUP HAS AN OBLIGATION BEFORE IT GOES TO THE NATIONAL SECURITY COUNCIL TO LOOK CAREFULLY AT ALL ASPECTS OF A COVERT FINDING AND ASK ITSELF THESE KINDS OF QUESTIONS: IS IT CONSISTENT WITH OVERT UNITED STATES POLICY? WHAT ARE THE CONSEQUENCES GOING TO BE IF THE ACTIVITY IS PUBLICLY EXPOSED? IS IT CONSISTENT WITH AMERICAN VALUES? AND WILL IT WORK? NOT ALL COVERT ACTIVITIES WILL SUCCEED, BUT I BELIEVE THAT IF SUBJECTED TO THESE KINDS OF TESTS, AND THIS KIND OF MANAGEMENT, WE HAVE THE BEST CHANCE OF GETTING THE MOST EFFECTIVE AND PRODUCTIVE USE FROM OUR COVERT CAPABILITY.

OUR RELATIONSHIP WITH THE CONGRESS MUST BE ONE OF TRUTH AND NOT OF DECEPTION. THERE IS SO MUCH CONFUSION ABOUT DENIABILITY AND DECEPTION THAT I THINK THAT IT'S IMPORTANT TO MAKE ONE LEGITIMATE DISTINCTION. IN COVERT ACTIVITY THERE IS OFTEN DECEPTION TO CONCEAL THE SOURCE OF THE ACTIVITY IN ORDER TO INFLUENCE THROUGH MEANS THAT WE BELIEVE TO BE APPROPRIATE BUT WHICH MUST NECESSARILY BE COVERT. BUT IN DEALING WITH THE CONGRESS THERE IS ABSOLUTELY NO EXCUSE FOR DECEPTION.

THERE WILL BE OCCASIONS, I BELIEVE, WHEN I MAY NOT BE IN A POSITION TO RESPOND TO A PARTICULAR QUESTION, ESPECIALLY IN AN OPEN SESSION OF CONGRESS. BUT I BELIEVE IT IS POSSIBLE TO TELL THE MEMBERS OF CONGRESS--AND I HAVE DONE SO ON OCCASION--THAT I AM NOT AT LIBERTY TO ANSWER THE QUESTION, THAT I HAVE AN ANSWER BUT I CANNOT GIVE IT. THAT IS A LOT DIFFERENT THAN TRYING TO ANSWER THE QUESTION NARROWLY WHEN I KNOW WHAT THE CONGRESS WANTS TO HEAR FROM ME, OR PRETENDING THAT THEY HAVE FAILED TO ASK THE QUESTION ACCURATELY ENOUGH. I THINK WE HAVE AN OBLIGATION TO SPEAK TO EACH OTHER AS INDIVIDUALS DOING BUSINESS--KNOWING WHAT EACH OTHER WANTS TO KNOW AND BEING HONEST ABOUT WHAT WE ARE GOING TO TELL THEM OR NOT TELL THEM. IF I DECLINE TO ANSWER, FOR REASONS THAT SEEM LEGITIMATE TO ME, THERE ARE ALWAYS OPPORTUNITIES TO ELEVATE THAT ISSUE--FOR CONGRESS TO APPEAL OVER MY HEAD--OR THEY MIGHT MAKE IT ROUGH ENOUGH ON ME THAT I MAY CONCLUDE THAT I SHOULD ANSWER. BUT A LEVEL OF HONESTY--A RECOGNITION THAT NOTHING IS BEING WITHHELD BY DECEPTION--IS VITALLY IMPORTANT IN THE RELATIONSHIP OF THE BALANCE AND SHARING OF POWERS.

I BELIEVE THAT SHARED RESPONSIBILITY FOR INTELLIGENCE IS VITALLY IMPORTANT BOTH ON THE EXECUTIVE, AND ON THE CONGRESSIONAL, SIDE. AND IT WAS WITH THAT IN MIND THAT I MADE THIS PLEDGE AT THE TIME THAT I WAS SWORN INTO OFFICE, AND I MAKE IT AGAIN TO YOU: THAT WE WILL WORK CLOSELY WITH THOSE IN THE EXECUTIVE WHO MUST MAKE THE POLICY RECOMMENDATIONS THAT DEFINE OUR PRESENT AND SHAPE OUR FUTURE, PROVIDING OUR ASSESSMENTS OBJECTIVELY, PROFESSIONALLY, HELPING TO PUT TRUTH INTO ACTION. AND WE WILL WORK WITH THE CONGRESSIONAL COMMITTEES WHICH MUST ACT IN SECRET MATTERS AS SURROGATES FOR THE CONGRESS AND THE AMERICAN PEOPLE, AND WE WILL BE WORTHY OF THEIR TRUST. WE WILL WORK WITH THE INTELLIGENCE COMMUNITY TO MOBILIZE OUR VAST TALENT AND RESOURCES TO BETTER SERVE OUR COMMON PURPOSE. AND WE WILL DILIGENTLY CARRY OUT OUR ASSIGNMENTS AROUND THE WORLD, HOWEVER DIFFICULT, WITH FIDELITY TO THE CONSTITUTION AND THE LAWS OF OUR BELOVED COUNTRY. A NATION DEDICATED TO THE RULE OF LAW CAN PROTECT ITSELF IN NO OTHER WAY.

FOOTNOTES

1. "Washington Talk" article, New York Times, 27 July 1985.
2. See "National Security and the First Amendment," by John S. Warner, Studies in Intelligence, Spring 1983, p. 21.
3. See Warner article, p. 22.
4. Public Law 98-477, Central Intelligence Information Act, 15 October 1984.
5. Foreign Intelligence Surveillance Act of 1978, 25 October 1978.
6. Hughes-Ryan Amendment, Foreign Assistance Act of 1961.
7. Subchapter III...Accountability for Intelligence Activities, National Security Act of 1947.